IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.1616 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. S.B. Keshwani for the applicants.

Mr. D.N. Salvi for Union of India.
Mr. P.S. Hingorani, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : 17TH AUGUST, 2006

P.C.

. This is an application for bail filed by the applicants who are arrayed as accused Nos. 2 and 3 in Special Case No. 23/2001, which is pending before the Special Judge, N.D.P.S. for Greater Bombay.

2. The only ground on which bail is sought by the applicants is that they have been in custody for more than 5-1/2

years for want of trial. It is their grievance that the prosecution has given a list of about 54 witnesses. Today the prosecution witness No. 6 is being examined. Even by a conservative estimate half the number of witnesses from the list are examined, the grievance is that the trial would not be concluded much less within the time limit set in the order passed in Criminal Application No.223 of 2005, dated 13th May, 2005.

3. Mr. Salvi appearing for the prosecution submits that it is not only because of the fact that list of the witnesses on behalf of the prosecution consists of 54 persons but also because there are about 21 accused who have engaged about 8 defence lawyers and each one of them is cross-examining the witnesses of the prosecution that the process takes time. He submits that, in public interest merely because the trial is not concluded within the time period

set by the Court the accused in NDPS cases may not be enlarged on bail unless a strong case, within the limits set out in law, is made out.

4. With the assistance of the learned Counsel appearing on behalf of both sides, I have perused the application and the annexures thereto and affidavit- in- reply filed by the prosecution.

5. The trial has already been expedited by this Court and it was directed to be concluded by the end of March, 2006. The relevant para in the order passed on 13th May, 2005 in Criminal Application No. 223 of 2005 reads thus;-

" It is true that the accused are in jail for four and half years but on that ground alone, the accused cannot be released on bail when they are facing charges under the NDPS Act. The proper course for the prosecution agency is to

move the Supreme Court to get the special leave petition disposed of and start with the trial in the light of the Supreme Court's order. Mrs. Alka Tyagi, Director of N. C.D. may take steps in that behalf. The prosecuting agency should also explore the possibility of proceeding with the case as there is no stay order passed by the Supreme Court. The prosecuting agency must apply its mind to the provisions of Criminal Procedure code to find out whether the trial or certain accused can be separated. If the accused are not co-operating or creating obstacles, the court will have to deal with them with a firm hand. If the special leave petition is not disposed of in the near future, if found feasible, possible and not detrimental to the case, the Special Court may consider the possibility of separating the trial and bringing it to an expeditious end. On the request made by the Special court to extend the time to dispose of the trial, the time is extended upto March, 2006. The special Court should make all efforts to dispose of the case within the extended time."

5. In my view, the learned Judge has to keep in mind the directions of this Court and endeavour and dispose of this case at least by the end of January, 2007.

6. In case the trial is not concluded by that time, liberty is reserved to the applicants to apply for

appropriate relief.

(S.C. DHARMADHIKARI, J.)